



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0799; FRL-9246-02-R9]

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District; Open Burning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or the “District”) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) and particulate matter (PM) from agricultural open burning. We are approving additional local restrictions on such burning under the Clean Air Act (CAA or the Act).

DATES: This rule is effective [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2021-0799. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the

FOR FURTHER INFORMATION CONTACT section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Proposed Action

On November 29, 2021, CARB submitted a document entitled “Proposed District Rule 4103 (Open Burning) Technical Submittal for Receiving SIP Credit for Reductions in Agricultural Burning,” dated November 18, 2021 (the “2021 Technical Submittal”), to the EPA for inclusion in the California SIP. The 2021 Technical Submittal includes a document called the “Supplemental Report and Recommendations on Agricultural Burning” (“2021 Supplemental Report”). Table 2-1 of the 2021 Supplemental Report, “Accelerated Reductions by Crop Category” includes an updated schedule of prohibitions (“2021 Schedule”). On December 23, 2021 (86 FR 72906), the EPA proposed to approve the 2021 Schedule and the following additional materials supporting the 2021 Schedule: Resolution 21-06-12 by the SJVUAPCD Governing Board dated June 17, 2021, Resolution 21-4 by the California Air Resources Board (CARB) dated February 25, 2021, and a letter from the CARB Executive Officer to the SJVUAPCD dated June 18, 2021.

We proposed to approve this SIP revision because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the SIP revision and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received two comments. The first comment was from a member of the public concerning the use of open burning to process dead and dying trees for methane reduction and to generate renewable energy. This comment appears to concern biomass plants, which are not regulated under SJVUAPCD Rule 4103. Furthermore, aside from orchard waste, wood waste resulting from dead and dying trees is not subject to the requirements of SJVUAPCD Rule 4103. As such, we do not consider this comment to be relevant to our rulemaking.

The second comment was from the SJVUAPCD concerning the EPA's statement in our technical support document to the proposed rule, where we discussed a prospective rule effectiveness (RE) value of 80% for use in calculations for expected emission reductions for this SIP revision. This comment is not relevant to the approvability of the Technical Submittal, as we are not making any final determinations of creditable RE for the 2021 agricultural burning prohibition SIP revision in this rulemaking. Therefore, we intend to address this comment in the context of any future action(s) that rely on emissions reductions associated with this measure.

III. EPA Action

No comments were submitted that change our assessment of the SIP revision as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving the following materials from the 2021 Technical Submittal into the SIP: Table 2-1 "Accelerated Reductions by Crop Category" of the "Supplemental Report and Recommendations on Agricultural Burning" and Resolution 21-06-12, which were adopted by the SJVUAPCD Board on June 17, 2021; Resolution 21-4 "San Joaquin Valley Agricultural Burning Assessment" adopted by CARB on February 25, 2021; and the letter dated June 18, 2021 from Richard W. Corey, Executive Officer, CARB, to Samir Sheikh, Executive Director, SJVUAPCD, concurring on the 2021 Supplemental Report.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference.

In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SIP revision from the SJVUAPCD described in Section III of this preamble and set forth below in the amendments to 40 CFR part 52. The SJVUAPCD provisions being incorporated by reference concern emissions of oxides of nitrogen (NO_x) and particulate matter (PM) from agricultural open burning. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days**

after date of publication in the *Federal Register*]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 3, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends Part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart F – California

2. Section 52.220 is amended by adding paragraphs (c)(388)(i)(B)(9), (10) and (11) and (c)(572) to read as follows:

§52.220 Identification of plan-in part.

* * * * *

(c) * * *

(388) * * *

(i) * * *

(B) * * *

(9) Previously approved on January 4, 2012, in paragraph (c)(338)(i)(B)(3) of this section and now deleted with replacement in paragraph (c)(572)(i)(A)(1) of this section, Table 9-1, Revised Proposed Staff Report and Recommendations on Agricultural Burning, approved on May 20, 2010.

(10) Previously approved on January 4, 2012, in paragraph (c)(338)(i)(B)(4) of this section and now deleted with replacement in paragraph (c)(572)(i)(A)(2) of this section, San Joaquin Valley Air Pollution Control District, Resolution No. 10-05-22, adopted on May 20, 2010.

(11) Previously approved on January 4, 2012, in paragraph (c)(338)(i)(B)(5) of this section and now deleted with replacement in paragraphs (c)(572)(i)(B)(1) and (2) of this section, California Air Resources Board, Resolution 10-24, adopted on May 27, 2010.

* * * * *

(572) Amended enforceable requirements for the following APCD were submitted on November

29, 2021, by the Governor's designee as an attachment to a letter dated November 24, 2021.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(1) Table 2-1, "Accelerated Reductions by Crop Category" of the Supplemental Report and Recommendations on Agricultural Burning, adopted on June 17, 2021.

(2) San Joaquin Valley Unified Air Pollution Control District Governing Board Resolution 21-06-12 "Approve Supplemental Report and Recommendations on Agricultural Burning," adopted June 17, 2021.

(B) California Air Resources Board.

(1) Resolution 21-4 "San Joaquin Valley Agricultural Burning Assessment," adopted on February 25, 2021.

(2) Letter dated June 18, 2021, from Richard W. Corey, Executive Officer, CARB, to Samir Sheikh, Executive Director, SJVUAPCD, concurring on the SJVUAPCD Supplemental Report and Recommendations on Agricultural Burning, approved June 17, 2021.

(ii) [Reserved]

[FR Doc. 2022-12387 Filed: 6/15/2022 8:45 am; Publication Date: 6/16/2022]